

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

CARL CAMPBELL, et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:10-cv-00124

FILMORE CAPITAL PARTNERS, LLC, et al.,

Defendants.

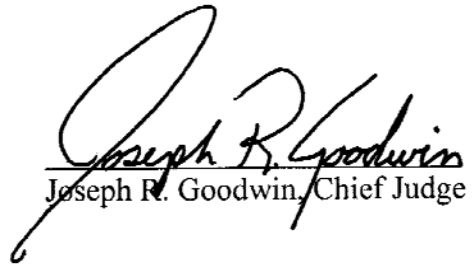
**MEMORANDUM OPINION AND ORDER**

Pending before the court is the plaintiffs' Motion to Remand [Docket 16]. The plaintiffs assert that the case should be remanded because they intend to add an as-of-yet unidentified nondiverse defendant in place of "John Does 1 through 10," which would destroy diversity in this case.

The plaintiffs concede that federal courts should not consider fictitious-name defendants in determining whether diversity jurisdiction exists. *See* 28 U.S.C. § 1441(a) ("For purposes of removal . . . the citizenship of defendants sued under fictitious names shall be disregarded."). At the time of removal, there was complete diversity between the parties and over \$75,000 in controversy. If in the future the plaintiffs want to add a nondiverse defendant, then the court will assess the facts as they exist at that point. The court will not, however, remand this case based on a prediction that a nondiverse party might later be added.

The Motion to Remand [Docket 16] is **DENIED**. The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: March 30, 2010



Joseph R. Goodwin, Chief Judge